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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/655,853

05/30/96

MCMASTER

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GLT-1540-R

IM31/1011

EXAMINER

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ART UNIT

PAPER NUMBER

1731

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 78

Application Number: 08/655,853
Filing Date: May 30, 1996
Appellant(s): MCMASTER ET AL.

Earl J. LaFontaine
For Appellant

EXAMINER'S ANSWER

This is in response to appellant's brief on appeal filed September 10, 2001.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct. Upon reconsideration,

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

Upon reconsideration, the examiner has decided to withdraw the rejection of claims 27 and 30 under 35 USC 112 paragraph 1. The only issue remaining on appeal is whether claim 27 constitutes recapture as described in the final rejection.

(7) *Grouping of Claims*

Claim 27 is the only claim on appeal.

(8) *Claims Appealed*

Claim 30 contain(s) substantial errors as presented in the Appendix to the brief. Accordingly, claim 30 is correctly written in the Appendix to the examiner's answer.

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(9) *Prior Art of Record*

No prior art is relied upon by the examiner in the rejection of the claims under appeal.

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim 27 is rejected under 35 U.S.C. 251. This rejection is set forth in prior Office Action, Paper No. 73.

(11) *Response to Argument*

In response to the argument that the applicant did not surrender the right to claim a tempering station in application 07/083,675 (not 07/083,685 as stated in the reply brief), the examiner disagrees. The Applicant is relying on the title and specification of the later filed application 07/249,718 (Pat 488527) to support allegations that an apparatus solely for tempering was not intended to be surrendered in the previously filed application 07/083,675. It is the position of the examiner that the subject matter cannot be "un - surrendered". Moreover, removal of the claims to apparatus only for tempering constituted a surrender and subsequent filing of an application with no claims to apparatus only for tempering would reinforce the original surrender.

In response to the argument that claim 27 is narrower in scope than any of the cancelled quench claims, it should be noted that the test for recapture has been mischaracterized by the applicant. The test for recapture requires a comparison of the breadth of the reissue claims with the breadth of the patent claims to determine the presence of a broadening aspect. Further, claim 27 was established in the final rejection (paper no. 73) to be broader in one respect than the patented claims in one respect. That respect was further established to be germane to the prior

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art rejection of the canceled claims. The narrower aspects outlined by the applicant are not germane to the prior art rejection of the canceled claims.

For the above reasons, it is believed that the rejections should be sustained.



Respectfully submitted,

Sean E Vincent
Primary Examiner
Art Unit 1731

S Vincent
September 25, 2001

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APPENDIX TO EXAMINER'S ANSWER

30. A glass sheet bending and tempering apparatus comprising:
lower and upper opposed deformable platens each of which includes elongated quench tubes
which extend in a spaced apart relationship to each other in the direction of conveyance of the
glass sheet and have quench openings, the lower platen having deformable drive shafts which
extend between the elongated quench tubes and are oriented to be generally transverse to the
direction of travel of the glass sheet, and which deformable drive shafts are rotatably supported
by those quench tubes, and the lower platen also having drive wheels supported on the
deformable drive shafts thereof at spaced locations to engage and move the glass sheet to be
bent; the upper platen having idler shafts mounted on the elongated quench tubes thereof and
also having idler wheels mounted by the idler shafts at spaced locations to engage the glass sheet
to be bent; actuating means for causing deformation of the lower platen with the upper platen
being conformably deformable to the shape of the lower platen as the lower platen is bent from a
flat shape to a bent shape with the glass sheet disposed between the platens as the quench
openings of the elongated quench tubes and the wheels are moved with the platens as the wheels
engage and bend the glass sheet; means to supply quenching gas to the quench openings of both
platens after bending has finished to thereby temper the bent glass sheet between the platens; and
drive means for driving the drive wheels to move the glass sheets during the bending and
tempering of the glass sheet.